

In the Matter of Merchant Mariner's Document No. Z-946831 and all
other Licenses, Certificates and Documents
Issued to: LEO BURTON LOGAN, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LEO BURTON LOGAN, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 27 July 1955, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-946831 issued to Leo Burton Logan, Jr. upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS SANTA LEONOR under authority of the document above described, on or about 13 June 1951, while said vessel was in the port of Los Angeles, California, he wrongfully and unlawfully had in his possession flowering tops and leaves of Indian hemp (*Cannabis sativa*) otherwise known as marijuana.

The hearing commenced on 22 November 1954. Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own choice. Counsel for Appellant made a motion to dismiss on the ground of laches in that the Coast Guard had not exercised due diligence in taking action against Appellant within a reasonable period of time and this had prejudiced Appellant in obtaining witnesses. The Examiner denied the motion since there was no showing that the Coast Guard had knowledge of the incident in 1951 or that the loss of witnesses was material. Appellant then entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant moved for the production of four witnesses. The Investigating Officer offered in evidence a certified copy of an entry in the Official Logbook of the SANTA LEONOR and several documents pertaining to Appellant's conviction in a California State court for possession of marijuana on 13 June 1951.

In defense, Appellant offered in evidence the depositions of

two of the four witnesses previously requested and the testimony of one of the two requested witnesses who roomed with Appellant on the SANTA LENOR. Counsel also introduced evidence to prove that Appellant's conviction in the California State court had been set aside after Appellant's satisfactory conduct during probation and the cause dismissed under section 1203.4 of the California Penal Code.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-946831 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority. In his decision, the Examiner denied counsel's motion to strike the Investigating Officer's exhibits concerning Appellant's conviction in the California court.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 13 June 1951, Appellant was serving as an ordinary seaman on board the American SS SANTA LEONOR and acting under authority of his Merchant Mariner's Document No. Z-946831 when the ship arrived at the port of Los Angeles after a foreign voyage.

On this date, a U. S. Customs Searching Squad conducted a routine search of the ship. When Customs Officer Lloyd searched the room which Appellant shared with two other seamen, Officer Lloyd found three cigarettes under a piece of cardboard in a small compartment attached to the inside of the unlocked door to Appellant's locker. Officer Lloyd thought that these cigarettes, as well as particles of leaves and seeds in the pockets of a shirt and pair of trousers in Appellant's locker, contained marijuana. This impression was later confirmed by analysis.

Appellant was taken into custody when the cigarettes were found in his locker. At first, Appellant denied having any knowledge as to how the marijuana got in his locker. When questioned later, Appellant voluntarily stated that he purchased five marijuana cigarettes in Chile, smoked one of the cigarettes, gave one of them away and placed the remaining three in his locker where they were found.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the evidence was insufficient to justify the verdict; irregularity in the proceedings prevented Appellant from having a fair trial; the order was excessive under the circumstances and appears to have been rendered under the influence of passion or prejudice; the order is contrary to law; an error of law occurred at the hearing and was excepted to by Appellant.

Appellant also contends that this action should be reversed and dismissed because although Appellant was found guilty (in the Superior Court of the State of California in and for the County of Los Angeles) of the unlawful possession of Cannabis sativa on 13 June 1951 and placed on probation for a period of two years, the court later terminated the period of probation, set aside the verdict of guilty and dismissed the cause pursuant to sections 1203.3 and 1203.4 of the Penal Code of the State of California. Since the latter section of the Penal Code also provides for the release of the defendant "from all penalties and disabilities resulting from the offense of crime of which he has been convicted," the record of conviction cannot be used in evidence against Appellant in this proceedings.

The case of In re Ringnalda (D. C. Calif. 1943) 48 Fed. Supp. 975, states that court action under sections 1203.3 and 1203.4 completely expunges and wipes out the record of conviction for all purposes. This interpretation by a Federal court is binding in this proceeding, conducted by a branch of the United States Government, despite California court decisions to the contrary concerning disbarment of an attorney and suspension of a physician's license. These decisions are based on the theory that it is not within the power of the legislative branch to release convicted defendants from "penalties and disabilities" resulting from disciplinary proceedings instituted by other properly authorized bodies such as the Bar Association and Board of Medical Examiners; and, therefore, the correct interpretation of section 1203.4 is that such a release does not obliterate the fact that the defendant was convicted even though section 1203.4 states, as the only condition for later use of a conviction which has been set aside, that it may be pleaded and proved in a subsequent prosecution of the defendant for any other offense.

Appellant should be restored to all the rights he possessed prior to conviction, including the right to earn a livelihood as a seaman for the rest of his natural life.

APPEARANCES: Francis J. Solvin, Esquire, of San Francisco,
California, of Counsel.

OPINION

The exceptions mentioned on appeal are blanket in character except for the contention with respect to Appellant's conviction which was later set aside by the court. In view of this lack of specificity and in the absence of clear error appearing in record, it is sufficient to state that these general exceptions are considered to be without merit.

As to the delay in bringing this matter to a hearing, it is noted that it is often impossible to avoid such delays because of the transitory nature of a seaman's occupation. This factor was apparently considered by Congress in recent legislation which permits action against merchant seamen's documents within ten years after conviction for violation of a narcotic drug law. 46 U.S.C. 710c. In view of this factor and also because Appellant has shown no prejudice through the loss of witnesses, it is my opinion that there is no basis for the application of the doctrine of laches in this case.

I agree with the Examiner's statement that there is substantial evidence in the record to support the allegations contained in the specifications without reference to Appellant's conviction which was later set aside. The offense of wrongful and illegal possession of marijuana is fully proved by the entry in the Official Logbook of the ship and the two depositions which were offered in evidence by Appellant. The depositions were taken from the Customs Officer who arrested Appellant after finding the marijuana cigarettes in his locker and the chemist who determined by analysis that these cigarettes contained marijuana. Hence, the proof of the specification does not rest on the proof of conviction but it does rest on the same evidence upon which counsel for Appellant contends, in his argument and on appeal, the conviction was based. But since these facts were established independently of the court proceedings, there is no reason why the technical plea permitted by section 1203.4 should preclude the use of these facts in this proceeding any more than if there had been no court action taken against Appellant as a result of this incident. In re Ringnald, supra, agrees that the same facts may be proved by "evidence dehors the expunged record." And another case states that the "undisputed fact remains that the act was committed" and "the subsequent plea of not guilty did not signify a claim of innocence but was a technical plea permitted by section 1203.4." In re Paoli (D.C.Calif., 1943), 49 Fed. Supp. 128. It is my conclusion that proof of the specification does not depend upon the record of Appellant's conviction.

Nevertheless, I do not concede that the record of conviction has been obliterated for the purpose of these disciplinary

proceedings. Since the California court decisions referred to by Appellant are analogous to these actions against seamen's documents, the same theory is applicable. Although a technical plea has been permitted as a method of granting clemency by restoring to a defendant certain rights and removing certain disabilities, the original conviction was a final judgement whether either execution of sentence or imposition of sentence was stayed and the defendant placed on probation by the court. Korematsu v. United States (1943), 319 U.S. 432. The conditional setting aside of the conviction will not preclude the subsequent utilization of the conviction in order to take action against a seaman's documents when such action is based on a prior final judgement.

For these reasons, I conclude that the giving of a second chance by the State of California does not require similar treatment in these proceedings. Narcotics offenses are considered to be so serious that revocation is mandatory in all such cases. 46 CFR 137.03.1. This action is in accordance with the statutory duty of the Coast Guard and it does not infringe upon Appellant's restored right to take his place ashore in the community.

In view of the delay in bringing this matter to a hearing and Appellant's exemplary record during the interim, Appellant will be allowed two years credit (prior to revocation) towards the three year period after which seamen found guilty of narcotics offenses may apply for administrative clemency. 46 CFR 137.03-30. Consequently, Appellant will be permitted to submit evidence of good conduct and character to the Commandant (MVP), on or after 27 July 1956, and request the issuance of a new document.

ORDER

The order of the Examiner dated at San Francisco, California, on 27 July 1955 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 13th day of January, 1956.

10560 TREASURY, USCGHQ, WASH., D.C.